

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLENE KLEIN,

Plaintiff,

v.

OFFICER STEPHEN MADISON,
OFFICER CHRISTOPHER HENDRICKS,
OFFICER MICHAEL GOOD, OFFICER
JACOBY GLENNY, JOHN/JANE DOES
1-X, MAYOR EDWIN PAWLOWSKI,
FORMER CHIEF KEITH MORRIS, and
CITY OF ALLENTOWN,

Defendants.

CIVIL ACTION NO. 17-4507

ORDER

AND NOW, this 10th day of April, 2019, after considering: (1) the defendants' motion for summary judgment (Doc. No. 55), including their statement of undisputed material facts and associated exhibits (Doc. No. 56), (2) the plaintiff's response in opposition (Doc. No. 58), including the plaintiff's response to the defendants' statement of undisputed material facts and the plaintiff's additional facts that preclude summary judgment and its associated exhibits (Doc. No. 58-3), (3) the defendants' reply in support of their motion for summary judgment (Doc. No. 62), and (4) the plaintiff's sur-reply (Doc. No. 63); and after oral argument on January 9, 2019 (Doc. No. 60); and, for the reasons stated in the separately filed memorandum opinion, it is hereby **ORDERED** that the motion for summary judgment (Doc. No. 55) is **GRANTED IN PART** and **DENIED IN PART**¹ as follows:

1. The motion for summary judgment is **DENIED** as to the plaintiff's:

¹ The parties may re-raise the following arguments at trial: qualified immunity on excessive force, Political Subdivision Tort Claims Act immunity as to the plaintiff's state law tort claims, and the plaintiff's request for a punitive damages instruction.

a. Section 1983 claims for excessive force, illegal search, failure to intervene, civil conspiracy, and denial of medical care against the defendants, Officer Stephen Madison, Officer Christopher Hendricks, Officer Michael Good, and Officer Jacob Glenny (collectively the “Officers”);

b. Section 1983 derivative liability claims against the defendants, (former) Chief Keith Morris and the City of Allentown;

c. Pennsylvania state law claims for assault and battery, trespass, and civil conspiracy against the Officers; and

d. Claim for injunctive relief under the Pennsylvania Constitution against the Officers.

2. The motion for summary judgment is **GRANTED** as to the plaintiff’s claim for monetary damages under the Pennsylvania Constitution against the Officers; and

3. The plaintiff’s Fourteenth Amendment due process claim based on fabrication of evidence against the Officers is **DISMISSED WITHOUT PREJUDICE**.²

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.

² When a court disposes of a claim on the basis of *Heck v. Humphrey*, 512 U.S. 477 (1994), even at the summary judgment stage, it should be a dismissal without prejudice. *Schreane v. Marr*, 722 F. App’x 160, 166 (3d Cir. 2018) (per curiam).